



Office of the Attorney General

State of Texas

January 28, 1997

DAN MORALES

ATTORNEY GENERAL

Ms. Celamaine Cunniff
Regional Attorney
Texas Department of Protective
and Regulatory Services
P.O. Box 4300
Tyler, Texas 79116-3700

OR97-0172

Dear Ms. Cunniff:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103254.

The Texas Department of Protective and Regulatory Services (the "department") received an open records request for past records concerning two children. The requestor has received a written authorization of release from the biological mother of the children. You contend that the department may withhold the requested records from the public pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

You received the request for information on September 13, 1996 and you sought a decision from this office on October 28, 1996. You did not seek an opinion from the Attorney General within the statutory time frame. The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 261.201(a) of the Family Code provides that

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The requested information here consists of "reports, records, communications, and working papers used or developed" in an investigation conducted under chapter 261 of the Family Code. We believe subsection (a) is applicable to the requested information.

Subsection (f) of section 261.201 of the Family Code provides:

Notwithstanding Subsection (b),¹ the department, on request and *subject to department rule*, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Family Code § 261.201(f)(emphasis and footnote added). Subsection (f) requires the department to provide certain parties, including a parent of a child who is the subject of a child abuse investigation, the information made confidential by subsection (a), with certain redactions. As the requestor here has received written authorization from the parent of the children involved in the investigation, we must consider whether the department must release the requested information to the requestor pursuant to subsection (f). However, the department's release of the information pursuant to subsection (f) is "subject to department rule." We will consider whether the department's rules provide for the disclosure of the requested information to the requestor.

¹Subsection (b), which is not applicable here, describes the conditions when a court may order the disclosure of information made confidential by subsection (a).

Section 700.102 of title 40 of the Texas Administrative Code states that:

Information about a child protective services client is confidential and may not be released except as authorized by statute, federal regulation, court direction, attorney general's opinion, and the [department's] rules concerning disclosure of information and confidentiality of information in Chapter 734 of this title (relating to Public Information).

Section 700.102 directs us to consider other department rules concerning the disclosure of client information. Section 700.103 of title 40 of the Texas Administrative Code provides as follows:

A child protective services client may review all information in the client's case record except the identity of the complainant, *information exempted from disclosure under the Open Records Act*, and information exempted under other state laws.

40 T.A.C. § 700.103 (emphasis added). This rule permits a "client" to review that client's case record, with the exception of the complainant's identity and information excepted from disclosure under the Open Records Act and other state laws. *See also* 31 T.A.C. § 734.11(c) (permitting client review of case record information, with certain exceptions). The department's "CANRIS report" appears to list the subjects of this request and their mother as department clients. However, even if the department considers these individuals clients under these circumstances, the regulation makes an exception to a client's right to review information in the client's case record for information "exempted from disclosure under the Open Records Act." We now proceed to consider whether the information is exempted from disclosure under the Open Records Act, and whether that demonstrates a compelling reason for nondisclosure.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In this instance, you have provided this office with a letter from the office administrator of the Smith County District Attorney. She states that the requested documents relate to a case that "is currently under official investigation and current or pending criminal prosecution by this office." The letter also states that the release of the requested records would hinder the investigation and prosecution of the case. We believe in this case that you have demonstrated a compelling reason under section 552.101 in conjunction with section 552.108 to overcome the presumption of openness. Open Records Decision No. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for

nondisclosure). Therefore, the department may withhold the requested documents.²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 103254

Enclosures: Submitted documents

cc: Ms. Patricia Blevins, R.R.A.
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(w/o enclosures)

²We note that there may be a conflict between the provisions of section 261.201(f) and the department's current regulations, as section 261.201(f) appears to be a parental access provision while the department's regulations permit the department to withhold information from the parent. We are confident that this apparent conflict will soon be resolved by the department's enactment of new regulations.